

1 WATTS GUERRA LLP
Mikal C. Watts (*pro hac vice*)
2 Guy L. Watts II (*pro hac vice*)
Paige Boldt, SBN 308772
3 70 Stony Point Road, Suite A
Santa Rosa, California 95401
4 Phone: (707) 241-4567
2561 California Park Drive, Suite 100
5 Chico, California 95928
Phone: (530) 240-6116
6 Email: mcwatts@wattsguerra.com

7 *Attorney for Numerous Wild Fire Claimants*

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re:
12 PG&E CORPORATION
13 - and -
14 PACIFIC GAS AND ELECTRIC
COMPANY,
15
16 Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**MOTION TO ALLOW/DEEM TIMELY
LATE FILING OF PROOF OF CLAIM
BY LISA WAHNON AND B.C.W., A
MINOR, MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION
OF ROY E. MILLER**

- 18 ☐ Affects PG&E Corporation
19 ☐ Affects Pacific Gas and Electric Company
20 ☒ Affects both Debtors

21 ** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Date: June 24, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor

Objection Deadline: June 10, 2020

23 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCH COURT
24 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED
25 PARTIES:

26 Watts Guerra LLP, together with several other firms, represent thousands of victims of the
27 Fires started by PG&E in 2017 (generally referred to as the “North Bay Fires”) and 2018 (“Camp
28 Fire”) and 2019 (“Kincade Fire”).

1 Watts Guerra LLP respectfully files this motion on behalf of Lisa Wahnnon and her minor child,
2 B.C.W. (collectively, “Movants”) to deem timely late filing of proofs of claims (“Motion”).

3 **I. SUMMARY OF ARGUMENT**

4 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
5 prejudice. In this case, due to a variety of stressors arising from the Tubbs Fire, Movants were
6 unable to timely file their proofs of claims. Because there is no danger of prejudice to the Debtors
7 as Debtors’ estates are solvent, and all creditors stand to be paid, the Motion should be granted to
8 allow these survivors to have their claims deemed timely. This Court must determine whether to
9 grant the Motion.

10 **II. FACTUAL BACKGROUND**

11 **A. Movants’ Claims Arising From Tubbs Fire¹**

12 Creditor, Lisa Wahnnon and her minor child, B.C.W. are survivors of the Tubbs Fire that
13 occurred in 2017. Movants lost their home in the Tubbs Fire. A letter from Lisa Wahnnon is
14 attached to the Declaration of Roy E. Miller. Lisa Wahnnon describes herself as not a litigious
15 person and although her family had substantial losses in a PG&E caused fire she was reluctant to
16 be involved with a claim. Just after the initial claims bar date, on October 23, 2019 PG&E caused
17 the Kincade Fire. Lisa Wahnnon was ordered to evacuate from her new home due to the Kincade
18 Fire. She reports this stress and fear from another evacuation triggered her emotional distress
19 over the wildfire and distracted her from filing a claim. Lisa Wahnnon contacted our office a few
20 days after the December 31, 2019 claims bar date and decided to pursue a claim for herself and
21 her minor son.
22

23 On January 29, 2020, Watts Guerra LLP filed claim numbers 96821 and 96822 on behalf
24 of Movants (“Subject Proofs of Claims”). True and correct copies of the Subject Proofs of Claim
25 are collectively attached to the Roy E. Miller Declaration as Exhibit “B”.
26
27

28 ¹ See Ex. 1, Declaration of Roy E. Miller.

1 **B. General Procedural Background**

2 On January 29, 2019, PG&E Corporation and Pacific Gas and Electric Company
3 (“Debtors” or “PG&E”) commenced with the Court voluntary cases (“Chapter 11 Cases”) under
4 chapter 11 of the United States Code (“Bankruptcy Code”). PG&E’s chapter 11 filings were
5 necessitated by a confluence of factors resulting from catastrophic fires that occurred in Northern
6 California prior to the Petition Date, and PG&E’s potential liabilities arising therefrom.
7

8 Since, the Debtors continue to operate their businesses and manage their properties as
9 debtors in possession pursuant to 11 U.S.C. §§ 1107(a) & 1108, the Debtors’ Chapter 11 Cases
10 are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the
11 Federal Rules of Bankruptcy Procedure (“FRBP”).

12 **C. Plan, Disclosure Statement, and the Solicitation Procedures Motion**

13 On January 31, 2020, as Dk. No. 5590, the Debtors filed an Amended Chapter 11 Plan
14 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31,
15 2020.

16 On February 7, 2020, as Dk. No. 5700, the Debtors filed a Disclosure Statement for the
17 Amended Plan.

18 On February 19, 2020, as Dk. No. 5835, the Debtors filed Motion for Entry of an Order (I)
19 Approving Form and Manner of Notice of Hearing on Proposed Disclosure Statement; (II)
20 Establishing and Approving Plan Solicitation and Voting Procedures; (III) Approving Forms of
21 Ballots, Solicitation Packages, and Related Notices; and (IV) Granting Related Relief (the
“Solicitation Procedures Motion”).

22 On March 16, 2020, as Dk. No. 6320, the Debtors filed the Amended Chapter 11 Plan
23 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16,
24 2020.

25 On March 17, 2020, the Solicitations Procedures Motion was approved. Since then, the
26 Disclosure Statement and Plan have been circulated for votes.

27 **D. Extended Bar Date for Fire Victim Creditors**

28 The deadline for filing proofs of claim with respect to any prepetition claim including, but
not limited to, all claims of Fire Claimants, Wildfire Subrogation Claimants, Governmental Units

1 and Customers, and for the avoidance of doubt, including all secured claims and priority claims,
2 against either of the Debtors was October 21, 2019 at 5:00 p.m. (“General Bar Date”).

3 The deadline for filing claims was extended to December 31, 2019 (“Extended Bar Date”),
4 solely for the benefit of any non-governmental Fire Claimants who did not file Proofs of Claim
5 by the General Bar Date.

6 **III. Legal Argument**

7 In a Chapter 11 case, the time to file a proof of claim may be extended under certain
8 circumstances. Fed. R. Bank. Pro. 3003(c)(3); Fed. R. Bank. Pro. 9006(b)(1). The bankruptcy
9 court has “broad equitable powers” in a Chapter 11 case with respect to the timing requirement
10 for proofs of claim. *Pioneer Inventory Services v. Brunswick Associates Limited Partnership*, 507
11 U.S. 380, 389 (1993). All in all, Rule 9006(b)(1) allows “late filings caused by inadvertence,
12 mistake, or carelessness, not just those caused by intervening circumstances beyond the party’s
13 control.” *Id.*, at 381. Even a creditor that did in fact receive notice may file a proof of claim
14 notwithstanding the expiration of a claims bar date in a Chapter 11 case upon a showing of
15 “excusable neglect.” *Id.* At 394-95 (“Had respondents here been prevented from complying with
16 the bar date by an act of God or some other circumstance beyond their control, the Bankruptcy
17 Court plainly would have been permitted to find ‘excusable neglect’ [under FRBP 9006].”).

18 In considering whether a creditor’s failure was the product of “excusable neglect,” the
19 court should take “account of all relevant circumstances surrounding the party’s omission,”
20 including “the danger of prejudice to the debtor, the length of the delay and its potential impact
21 on judicial proceedings, the reason for the delay, including whether it was within the reasonable
22 control of the movant, and whether the movant acted in good faith.” *Id.* at 395; *see also Corning*
23 *v. Corning (In re Zilog, Inc.)*, 450 F.3d 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list
24 of relevant factors). Again, a late-filed proof of claim is allowable where a creditor had actual
25 notice of the bankruptcy but, due to some external reason, failed to file a proof of claim or did not
26 realize that she had to, before the bar date. *See, e.g., Zilog, Inc. v. Corning (In re Zilog, Inc.)*,
27 450 F.3d 996, 1003-07 (9th Cir. 2006) (applying the *Pioneer* factors). All in all, Rule 9006(b)(1)
28

1 allows “late filings caused by inadvertence, mistake, or carelessness, not just those caused by
2 intervening circumstances beyond the party's control.” *Pioneer*, 507 U.S. at 381. Here,
3 consideration of all four *Pioneer* factors—as well as a fifth engrafted onto the *Pioneer* analysis by
4 some courts—weighs in favor of Movants.

5
6 Because in this case there is no danger of prejudice to the Debtors, the first *Pioneer* factor
7 weighs overwhelmingly in Movant’s favor. Debtors’ estates are solvent, and all creditors stand to
8 be paid. *See, e.g., In re Best Payphones, Inc.*, 523 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015) and *In re*
9 *Sheehan Mem’l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate is
10 solvent, “the proper remedy for a late filing is not the expungement of a claim, but its allowance
11 as a tardily filed claim only.). Secondly, immediately, upon receiving all the necessary
12 information the Subject Proofs of Claims were filed. Thirdly, the delay in filing the Subject
13 Proofs of Claim is reasonable considering the estrangement of Movants and the accompanying
14 stress of relocating after the emotional trauma they experienced as survivors of the Tubbs Fire.
15 Lastly, any prospect of prejudice beyond solvency is unlikely given (a) distributions have not been
16 made; and (b) the value of Movants’ claims relative to the value of Debtors’ estates is low. *See,*
17 *e.g., In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the late claim in
18 relation to the estate is a consideration in determining prejudice).
19
20
21
22
23
24
25

26 **IV. Conclusion**

27 For the reasons set forth above, the Movants respectfully request that this Court enter an
28 order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Granting the Motion;
2. Finding that Subject Proofs of Claims filed by Movants are to be allowed as having been timely filed;
3. Granting such other or further relief as the Court deems just and proper.

Dated: May 27, 2020.

Respectfully submitted,

WATTS GUERRA LLP

By: /s/ Mikal C. Watts
Mikal C. Watts